

WA 3017
4-30-01

JAN'S
COPY

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

| | | |
|--------------------------------------|---|------------------------------|
| IN THE MATTER OF: |) | ADMINISTRATIVE ORDER ON |
| |) | CONSENT |
| J.H. BAXTER & CO. |) | |
| Arlington, Washington |) | U.S. EPA, Region 10 |
| |) | Docket No. RCRA-10-2001-0086 |
| Respondent |) | |
| |) | |
| Proceeding Under Section 7003 of the |) | |
| Resource Conservation and Recovery |) | |
| Act, as amended, 42 U.S.C. § 6973 |) | |

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and J.H. Baxter & Co. ("Respondent"). This Order provides for the performance of certain activities by Respondent in connection with the property located at 6520 188th Street NE in Arlington, Washington (the "Facility").

2. This Order is issued pursuant to the authority vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act, as amended, ("RCRA"), 42 U.S.C. § 6973. The authority to issue orders pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973 has been delegated to the Director of the Region 10 Office of Waste and Chemicals Management by delegation R10 1281.8.

3. The Director of the Office of Waste and Chemicals Management has determined that the past or present handling, storage, treatment, transportation or disposal of Solid Waste or Hazardous Waste by the Respondent may present an imminent and substantial endangerment to health or the environment.

4. EPA has notified the State of Washington of this action pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

5. Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order.

6. The Respondent agrees to undertake all actions required by the terms and conditions of this Order. In any action by EPA or the United States to enforce the terms of this Order, Respondent consents to and agrees not to contest the authority or jurisdiction of the Director of the Office of Waste and Chemicals Management to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

II. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order that are defined in RCRA or in regulations promulgated under RCRA shall have the meaning assigned to them under

1 RCRA or in such regulations. Whenever terms listed below are used in this Order or in the
2 Attachments that are attached to and incorporated in this Order the following definitions shall apply.

3 a. "Administrative Record" shall mean the record compiled and maintained by EPA
4 relative to this Order.

5 b. "CERCLA" shall mean the Comprehensive Environmental Response,
6 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

7 c. "Contractor" shall include any subcontractor, consultant, or laboratory retained
8 to conduct or monitor any portion of the Work performed pursuant to this Order.

9 d. "Corrective Measures" shall mean those measures or actions that can control,
10 prevent, or mitigate the release or potential release of Solid Waste or Hazardous Waste or Hazard
11 Constituents into the environment.

12 e. "Corrective Measures Implementation" or "CMI" shall mean those activities
13 necessary to initiate, complete, monitor, and maintain the remedies EPA has selected or may select
14 to protect human health and/or the environment from the release or potential release of Solid Waste
15 Hazardous Waste or Hazardous Constituents into the environment from the Facility. The CMI
16 requirements are detailed in the CMI Scope of Work included as Attachment E.

17 f. "Corrective Measures Study" or "CMS" shall mean the investigation and evaluation
18 of potential remedies which will protect human health and/or the environment from the release or
19 potential release of Solid Waste or Hazardous Wastes or Hazardous Constituents into the
20 environment from the Facility. The CMS requirements are detailed in the CMS Scope of Work
21 included as Attachment C.

22 g. "Data Quality Objectives" shall mean the qualitative or quantitative statements, the
23 application of which is designed to ensure that data of known and appropriate quality are obtained and
24 that data are sufficient to support their intended use.

25 h. "Day" shall mean a calendar day unless expressly stated to be a Business day.
26 "Business day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any
27 period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal

1 holiday, the period shall run until the close of business of the next Business day.

2 i. "EPA" shall mean the United States Environmental Protection Agency, and any
3 successor departments or agencies of the United States.

4 j. "Excess Stormwater", for the purpose of the Excess Stormwater Management
5 Requirements set forth in this Order, shall mean that stormwater collected by Respondent to prevent
6 overflow from any ditch or swale at the Facility.

7 k. "Facility" shall mean all contiguous property under the control of the J.H. Baxter &
8 Co., at 6520 188th Street NE, Arlington, Washington as described in Attachment H.

9 l. "Hazardous Constituents" shall mean those constituents listed in Appendix
10 Appendix VIII of 40 C.F.R. Part 261, and any constituent identified in Appendix IX to 40 C.F.R.
11 Part 264.

12 m. "Hazardous Waste" shall mean hazardous waste as defined in § 1004(5) of RCRA.

13 n. "Innovative Treatment Technologies" shall mean those technologies for treatment
14 of soil, sediment, sludge, and debris other than incineration or solidification/stabilization and those
15 technologies for treatment of groundwater contamination that are alternatives to pump and treat.

16 o. "Interim Measure(s)" or "IM(s)" shall mean those actions which can be initiated in
17 advance of implementation of the final corrective action to achieve the stabilization goals of
18 controlling or abating immediate threats to human health and/or the environment, and to prevent or
19 minimize the spread of contaminants while long-term Corrective Measures are being evaluated.

20 p. "Operation and Maintenance" or "O & M" shall mean all activities required to
21 maintain the effectiveness of the actions as required under the Operation and Maintenance Plan
22 approved or developed by EPA pursuant to this Order.

23 q. "Order" shall mean this Order and all Attachments to this Order. In the event of
24 conflict between this Order and any provision of any other agreement, order or writing, the terms and
25 conditions of this Order shall control;

26 r. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral or a
27 letter.

1 s. "Parties" shall mean the United States and Respondent J.H. Baxter & Co.

2 t. "Receptors" shall mean those humans, animals, or plants and their habitats which
3 may receive or be affected by releases of Solid Waste or Hazardous Waste from the Facility.

4 u. "Scope of Work" or "SOW" shall mean the outline of Work Respondent must use
5 to develop Work Plans, reports and other Submittals required by this Order as set forth in this Order
6 including its Attachments. All Attachments and modifications or amendments thereto, are
7 incorporated into this Order and are an enforceable part of this Order.

8 v. "Section" shall mean a portion of this Order identified by a Roman numeral, unless
9 used to refer to a statutory or regulatory section, or in a legal description of real property.

10 w. "Site" shall mean the J.H. Baxter & Co. Facility encompassing approximately fifty-
11 two acres of land at 6520 188th Street NE (just southwest of the intersection of 67th Avenue NE and
12 NE 188th Street) in Arlington, Snohomish County, Washington, and all property where Solid Waste or
13 Hazardous Waste or contaminants have come to be located. See Figure 1.

14 x. "Site Investigation" shall mean the investigation and characterization of
15 contamination including the nature, extent, direction, rate, movement, and concentration of
16 contamination and releases of Solid Waste or Hazardous Waste that have been, or are likely to, be
17 released into the environment from the Facility. The objectives and requirements for the Site
18 Investigation are detailed in Attachments A and B.

19 y. "Solid Waste" shall mean those solid wastes defined in Section 1004(27) of RCRA,
20 42 U.S.C. § 6903.

21 z. "Submittal" shall include any Work Plan, report, progress report, or any other
22 written document Respondent is required by this Order to send to EPA.

23 aa. "Violation" of this Order shall mean an action or omission, failure, or refusal to act
24 by Respondent that results in a failure to meet the terms and conditions of this Order, including its
25 Attachments.

26 bb. "Work" or "Obligation" shall mean any activity Respondent must perform to
27 comply with the requirements of this Order, including its Attachments.

1 cc. "Work Plan" shall mean the detailed plans prepared by Respondent to satisfy the
2 requirements of this Order, including the Attachments. Once approved, all Work Plans shall be
3 incorporated into this Order and become an enforceable part of this Order.

4 **III. PARTIES BOUND**

5 8. This Order applies to and is binding upon EPA, and upon Respondent and Respondent's
6 heirs, successors, and assigns. Any change in ownership or corporate status of Respondent including
7 but not limited to, any transfer of assets or real or personal property shall not alter Respondent's
8 responsibilities under this Order.

9 9. Respondent shall ensure that its Contractors and representatives retained to conduct or
10 monitor any portion of the Work performed to this Order receive a copy of this Order and comply
11 with this Order. Respondent shall be responsible for any noncompliance with this Order.

12 10. The signatory to this Order on Respondent's behalf certifies that he or she is authorized to
13 execute and legally bind Respondent to this Order.

14 11. Not later than thirty (30) days prior to any voluntary transfer by Respondent of any
15 interest in property at the Site or the operation of the Facility, Respondent shall notify EPA of the
16 proposed transfer. Respondent shall notify EPA of any involuntary transfers within three (3) Business
17 days of Respondent's initial receipt of notice of any involuntary transfer. Not later than five (5) days
18 after any transfer, Respondent shall submit copies of the transfer documents to EPA.

19 **IV. STATEMENT OF PURPOSE**

20 12. In entering into this Order, the objectives of EPA and the Respondent are:

21 a. to formulate and implement a plan for temporary management of Excess
22 Stormwater at the Site, including collection of Excess Stormwater in tanks, treatment of Excess
23 Stormwater to a concentration no greater than 1 µg/l or part per billion (ppb) pentachlorophenol
24 ("PCP"), and discharge of treated Excess Stormwater in a location and manner least likely to impact
25 the existing contaminated groundwater plume;

26 b. to perform sampling and analysis of drinking water wells selected pursuant to the
27 EPA-approved Drinking Water Sampling and Alternate Water Supply Work Plan and, if

1 contaminated water is detected, to promptly provide alternate water, sufficient in quantity and quality
2 to replace the contaminated water, to all affected users;

3 c. to conduct an investigation to determine the nature and extent of contamination and
4 to report on that investigation and to provide sufficient data to design and implement corrective action
5 or response measures to be taken;

6 d. to identify and evaluate, in accordance with the results of the investigation and
7 other such data as may be necessary, the corrective action alternatives that can prevent or mitigate any
8 release or migration of Hazardous Wastes or Solid Wastes at or from the Facility.

9 e. to implement the corrective action or response measures selected by EPA in
10 accordance with the process set forth in this Order.

11 f. to implement any other Interim Measures that may be required to relieve threats to
12 human health and/or the environment throughout the implementation of this Order.

13 g. to perform any other activities necessary to address or evaluate actual or potential
14 threats to human health and/or the environment resulting from the release or potential release of
15 Waste or Hazardous Waste at or from the Facility.

16 **V. EPA'S FINDINGS OF FACT**

17 13. Respondent is a California Limited Partnership authorized to do business in the State of
18 Washington.

19 14. Respondent has operated the Facility located at 6520 188th Street NE, Arlington,
20 Snohomish County, Washington, since 1970. The Facility consists of three parcels. Parcel A is about
21 fifteen acres and occupies the northern part of the Facility. Treated wood storage and the main
22 treatment plants, including butt tank, tanks systems, retorts and drip pads, are located on Parcel A.
23 Parcel B lies to the south of Parcel A and is roughly 30 acres in area. Untreated wood poles are stored
24 and peeled on Parcel B. The third parcel consists of a closed wood waste landfill that occupies the
25 remaining property just west of the south half of Parcel A. See Figure 1.

26 15. Respondent treats wood to produce utility poles at its Facility. Respondent currently uses
27 PCP/oil solution to treat wood, but used creosote as well as PCP until around 1990.

1 16. Respondent handles, stores, treats, and/or disposes of Solid Waste or Hazardous Waste
2 the Facility as a result of its wood-treating operations.

3 17. From sometime in the 1960s until 1970, Parcel A of the Facility had been used as a pole
4 treatment plant by Ted Butcher, Inc. Prior to that time, Parcel A had been used for agricultural
5 purposes. Parcel B was used for agricultural purposes prior to 1970 when Respondent purchased it.
6 Available information indicates that Butcher utilized a solution of PCP and creosote to treat the pole
7 When Respondent purchased the property, the equipment used for treating wood at the time include
8 an open full-length thermal treatment vat, a closed thermal treatment retort, and an open thermal
9 treatment butt vat. EPA's November 10, 1984 Superfund Preliminary Assessment of the Site states
10 that Butcher also reportedly used a 20 foot by 20 foot pit to dispose of PCP and creosote.

11 18. Releases of PCP solution from the butt tank were reported in March 1981 (1400 gallons
12 February 1989 (200 gallons), and January 1990 (2,000 gallons).

13 19. The area around the Facility is mixed residential, recreational and industrial. There is a
14 residence surrounded on three sides by the Facility on the Facility's east boundary, residences across
15 the railroad tracks and street to the east of the Facility, and residences north and southeast of the
16 Facility. In addition, there is a mobile home park northwest of the Facility and a ball park to the west
17 of the Facility. There is a boat manufacturer to the south and the airport to the west.

18 20. Private drinking water wells provide the source of water for some residences near the
19 Facility.

20 21. A drinking water supply well for the City of Arlington is located less than half a mile to
21 the west of the Facility.

22 22. The Facility and surrounding area are nearly flat and are near the eastern edge of the
23 Marysville Trough, a long flat-bottomed valley extending from the Stillaguamish River flood plain
24 south toward the City of Marysville. The Marysville Trough is bordered by uplands to the east
25 (Getchell Hill Plateau) and to the west (Tulalip Plateau). See Figure 2. The geologic deposits that
26 exist in the Marysville Trough are primarily composed of permeable sands and gravels and comprise
27 the aquifers which are predominately used locally as a drinking water source.

1 in Table 1 and Figure 1 for stormwater sampling locations.

2 29. Analysis of unfiltered stormwater entering french drains on the side of the Facility used
3 for storage of untreated wood (Parcel B) showed concentrations of PCP ranging from 7 to 73 µg/L.
4 See results in Table 2 and Figure 1 for sampling locations.

5 Groundwater Data

6 30. PCP has been detected in levels up to 58,000 µg/L or ppb in the ground water (or produ
7 in boring BT-S-GW under the Butt Treating Plant area at the Facility. Groundwater monitoring at t
8 Facility has also shown dissolved PCP in other monitoring wells, with concentrations ranging up to
9 870 µg/L in monitoring well MW-3. See PCP data in Table 3 and Figure 1 for groundwater
10 monitoring locations.

11 31. Groundwater monitoring at the Facility has shown dioxin, reported in TEF equivalent,
12 ranging from 0.0745 to 1056 pg/L. See Table 4.

13 32. The groundwater into which the stormwater at the Facility infiltrates is an underground
14 source of drinking water.

15 Soil Data

16 33. On March 25, 1992, Ecology conducted sampling in conjunction with the 1992 "J.H.
17 Baxter, Arlington Site Hazard Assessment". Four soil samples were obtained, two from around the
18 drip pads adjacent to the retorts, one from the south end of the treated wood storage area (Parcel A)
19 and one from the north end of the treated wood storage area. Ecology reported various polycyclic
20 aromatic hydrocarbons (PAHs) and other polychlorinated compounds, including PCP, present in the
21 soil. The results of the analysis of these samples showed PCP up to 1,900,000 µg/kg. The report als
22 states that, "[a]ll surface soil samples indicated "penta" in excess of 6000 µg/kg [or ppb]."

23 34. During inspections of the Site on August 16, 1999, and November 17, 1999, EPA
24 observed staining adjacent to the drip pads in the main treatment plant area of the Facility (Parcel A).
25 During the November 17, 1999 inspection, EPA took samples in the vicinity of the drip pads. Result
26 of the analysis of sediment samples collected showed concentrations of PCP in sediments along the
27 aprons of 9,600 µg/kg or ppb and 11,000 µg/kg or ppb.

1 35. Analysis of surface and subsurface soil samples obtained during investigative work
2 performed in the fall of 1999 and the winter of 2000 by Respondent is presented in the March 10,
3 2000, "Draft Remedial Investigation Report, J.H. Baxter Arlington Plant, Arlington, Washington."
4 See Figure 4 for soil sampling locations. PCP concentrations detected by Respondent in a sample of
5 surface soil taken between 2.5 and 4 feet below ground surface ranged up to 110,000 µg/kg. PCP
6 concentrations detected in subsurface soils range up to 1,400,000 µg/kg or ppb. See PCP results for
7 soil in Tables 5 and 6.

8 36. Dioxin results, reported as TEF equivalent, in the surface soils range from 1161 to 8248
9 ng/kg. Dioxin results for subsurface soils range from 79 to 7092 ng/kg. See results in Tables 5 and 6.

10 **Current Conditions**

11 37. On or about April 12, 2000, Ecology issued an Administrative Order to Respondent
12 finding, among other things, that the french drains at the Facility are prohibited underground injection
13 control wells and requiring Respondent to cease all injections of stormwater or other fluid and to
14 all french drains on the side of the Facility used for storage of treated wood (Parcel A).

15 38. As a result of the requirement of the April 12, 2000 Administrative Order issued by
16 Ecology, Respondent anticipates that its Facility will be inundated by stormwater. Specifically,
17 Respondent anticipates that the railroad spur to the kilns, the valve pit under the retorts, the drip pad
18 and the tank farm may flood with stormwater during the winter rainy season. The untreated wood
19 side, or Parcel B, is the part of the Facility with the lowest elevation. Given the additional
20 contribution of PCP into the environment that would result if the treatment plant flooded, significant
21 environmental impact is anticipated if flooding of the treatment plant occurs.

22 39. Respondent is subject to an Agreed Order with Ecology that is dated June 30, 1999, and i
23 issued pursuant to the Model Toxics Control Act or MTCA. The investigation conducted pursuant to
24 the Agreed Order was a focused investigation to evaluate the potential sources to observed
25 groundwater contamination and to identify contamination issues that need to be addressed. The work
26 performed under the Agreed Order was not a comprehensive, detailed study of general site condi
27 The information collected to date is insufficient to assess the nature and extent of contamination.

1 Examples of additional information that is needed include 1) the depth of the groundwater aquifer at
2 any aquitard; 2) the extent of contamination of the stormwater, surface water, groundwater and soil
3 throughout the Facility and off-site; and, 3) analysis of effects on current and potential Receptors. In
4 addition, of the private drinking water wells that are in use, only one sample has been collected and
5 analyzed for PCP. (The Thomco well at 18930 67th Ave. NE was sampled in 1999 and no PCP was
6 detected.)

7 40. Additional investigation of all media is needed to assess the conditions at the Site and to
8 determine the nature and extent of the contamination at the Site.

9 41. Light non-aqueous phase liquid ("LNAPL") is known to exist in the subsurface.

10 42. Hazardous Wastes, including Hazardous Constituents have been detected in stormwater,
11 soils and groundwater on and beneath the Facility.

12 43. The EPA Safe Drinking Water Act maximum contaminant level ("MCL") for PCP is 1
13 µg/L.

14 44. PCP is a man-made pesticide that does not occur naturally in groundwater or soil.
15 Exposure to PCP may cause serious adverse health consequences such as contact dermatitis, and
16 damage to vision. Upon ingestion, PCP may cause damage to the lung, liver, kidneys, blood, nervous
17 system, immune system and gastrointestinal tract. Inhalation of PCP can result in acute poisoning,
18 centering on the circulatory system with possible accompanying heart failure. PCP has been
19 classified by the EPA as a probable human carcinogen.

20 45. Dioxins are complex isomeric mixtures that originate from combustion sources such as
21 fly ash from municipal garbage incinerators, technical-grade PCP, and other sources. Limited
22 toxicological information is available for developing toxicity factors for each isomer, but what is
23 known indicates that the 2,3,7,8-TCDD congener is the most potent. Certain dioxins have been
24 reported to cause developmental toxicity in fish, birds and mammals and has been linked to birth
25 defects in mice. Certain dioxins are classified as a human carcinogens.

26 46. Based upon the information available to EPA regarding the contamination at the Site,
27 EPA has determined that there is a potential threat to human health from exposure to drinking water

1 contaminated with PCP and dioxin. There may also be threats to human health and the environment
2 from exposure to PCP and dioxin in soil and surface water and from other Hazardous Constituents.

3 **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

4 47. Based on the Findings of Fact set forth above, and the Administrative Record supporting
5 this Order, EPA has determined that:

6 a. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C.
7 § 6903(15).

8 b. PCP and dioxin detected in the environmental media at the Site are "hazardous
9 wastes" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), or "solid wastes" as defined by
10 Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

11 c. Solid Wastes or Hazardous Wastes have been and/or are being handled, treated,
12 stored, or disposed of by Respondent within the meaning of Section 7003 of RCRA, 42 U.S.C. §
13 6973.

14 d. The presence of Solid Wastes and/or Hazardous Wastes in the soil, stormwater and
15 groundwater at the Site resulted from the past or present handling, treatment, storage and/or disposal
16 of Solid Wastes and/or Hazardous Wastes by Respondent at the Facility.

17 e. Conditions at the Site may present an imminent and substantial endangerment to
18 health or the environment, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

19 f. The actions required by this Order are necessary to protect health or the
20 environment.

21 **VII. WORK TO BE PERFORMED**

22 **49. Project Managers/Contractors/Communication:**

23 a. All activities required of Respondent under this Order shall be performed only by
24 well-qualified persons, who possess all necessary professional licenses required by federal and state
25 law. All Work conducted under this Order shall be performed in accordance with prevailing
26 professional standards and shall be under the direction and supervision of qualified personnel.
27 Respondent shall designate a Project Manager who shall be responsible for administration of all the

1 Respondent's actions required by this Order. To the greatest extent possible, Respondent's Project
2 Manager shall be readily available during all Work to be performed pursuant to this Order. Within
3 seven (7) Business days after the effective date of this Order, Respondent shall notify EPA in writing
4 of the names, titles and qualifications of Respondent's selected Project Manager, any other reasonable
5 identifiable key personnel of any Contractors to be used in carrying out Work required by this Order,
6 and any reasonably identifiable personnel who will collect samples at the Site. Key personnel shall
7 include those individuals with significant responsibility for the design or oversight of the Work to be
8 performed by this Order. EPA retains the right to disapprove of the selected Project Manager, or any
9 key personnel of a Contractor retained by Respondent, and personnel who collect samples. In the
10 event that EPA disapproves of a selected Project Manager, key personnel of a Contractor, or
11 personnel who collect samples, EPA shall notify Respondent in writing of the disapproval and the
12 reasons for the disapproval. If EPA disapproves of a selected Project Manager, key personnel of a
13 Contractor, or personnel collecting samples, Respondent shall retain a different Project Manager,
14 Contractor, or sample collector within a reasonable period of time, not to exceed fifteen (15) Business
15 days following EPA's disapproval and shall notify EPA of the name and qualifications of the new
16 Project Manager, Contractor or sample collector within three (3) Business days of retention. If EPA
17 still disapproves, or if EPA later disapproves of the personnel selected during the performance of the
18 Work, EPA may exercise its right to perform any or all of the Work required by this Order and to seek
19 reimbursement of its costs from Respondent pursuant to statutory authorities. If EPA does exercise
20 its right to perform any or all of the Work required by this Order, EPA will attempt to provide
21 Respondent notice before performing such actions.

22 b. During the course of the Work conducted pursuant to this Order, Respondent shall
23 notify EPA in writing of any changes or additions to the Project Manager or any key personnel of a
24 Contractor, or personnel who collect samples, providing names, titles and qualifications. Such
25 notification shall occur at least five (5) days prior to such change or addition and EPA shall have the
26 same right to disapprove changes or additions to such personnel as it has regarding the initial
27 notification.

1 c. Receipt by Respondent's Project Manager of any notice or communication from
2 EPA relating to this Order shall constitute receipt by Respondent, except for notices regarding
3 disapproval of the Project Manager, which shall be sent directly to Georgia Baxter, Executive Vice
4 President, J.H. Baxter & Co.

5 d. EPA has designated Kimberly Ogle as its Project Manager. Respondent shall direct
6 all Submittals required by this Order to Kimberly Ogle at the U.S. Environmental Protection Agency,
7 Region 10, Mail Stop WCM-126, 1200 Sixth Avenue, Seattle, Washington 98101. EPA's Project
8 Manager may be changed. Respondent will be notified in writing if such a change does occur.

9 50. Excess Stormwater Management Requirements:

10 a. Within thirty (30) days of the effective date of this Order, Respondent shall submit
11 for EPA review and approval an Excess Stormwater Management Plan. The Excess Stormwater
12 Management Plan shall describe the tasks necessary for the collection of Excess Stormwater and
13 operation of an interim Excess Stormwater management system in compliance with the following
14 requirements and containing the following information:

15 i. The regulations at 40 C.F.R. Part 265, Subpart J and Subpart I, except
16 §§ 265.197(c) and 265.200 and the provisions of § 265.192 to the
17 extent that they require reviews, inspections, and/or certifications by an
18 independent qualified professional engineer or an independent qualified
19 installation inspector provided that these same reviews, inspections,
20 and/or certifications are performed by Respondent's staff or consultants
21 who are qualified, registered professional engineers or, where and as
22 allowed by the provisions of § 265.192, qualified installation
23 inspectors.

24 ii. Clearly mark and make visible for inspection the date upon which each
25 period of accumulation begins on each container and tank;

26 iii. Clearly label or mark each container and tank used to accumulate
27 Excess Stormwater with the words "Contains Contaminated"

- 1 Stormwater”;
- 2 iv. The regulations at 40 C.F.R. Part 265, Subparts C and D, § 265.16 and
- 3 § 268.7(a)(4);
- 4 v. Treat the Excess Stormwater to no greater than 1 µg/L PCP prior to
- 5 discharge;
- 6 vi. Analysis to confirm that Excess Stormwater has been treated to no
- 7 greater than 1 µg/L PCP before discharge; and,
- 8 vii. Discharge treated Excess Stormwater in a location and manner least
- 9 likely to impact the existing contaminated groundwater plume or, in the
- 10 alternative, disposal off-site.

11 b. Respondent must comply with the Excess Stormwater management requirements

12 set forth Paragraph 50. a. above until September 2002.

13 c. The Excess Stormwater Management Work Plan shall also include a schedule for

14 all activities, including the submission of an Excess Stormwater Management Report. The Excess

15 Stormwater Management Report shall be submitted sixty (60) days after EPA approval of the

16 Corrective Measures Implementation Plan, unless otherwise specified by EPA. The contents of the

17 Excess Stormwater Management Report shall be proposed in the Excess Stormwater Management

18 Work Plan and at a minimum shall document Respondent's compliance with the requirements set

19 forth in this Order for the collection and management of Excess Stormwater, operation and

20 maintenance of the Excess Stormwater treatment system, and disposal of Hazardous Waste generated

21 by the treatment of Excess Stormwater.

22 51. Drinking Water Sampling and Alternate Water Supply Requirements:

23 a. Within fifteen (15) days of the effective date of this Order, Respondent shall submit

24 for EPA review and approval a Drinking Water Sampling and Alternate Water Supply Work Plan.

25 The Drinking Water Sampling and Alternate Water Supply Work Plan shall describe tasks necessary

26 and include a schedule for the initial sampling and periodic re-sampling of every water supply well to

27 the north of the Facility in the area bounded between 67th Avenue NE and the western edge of

1 Section 15, up to the bluff of the Portage Creek basin until the bluff levels out then south to 204th
2 Street and east to 67th Avenue NE; all the wells along either side of 67th Avenue NE from 188th Street
3 NE to the first well south of 180th Place, and all the supply wells in Section 22 except that portion
4 excluded as depicted on the map attached to this Order (Attachment J), and any other additional well
5 determined to be necessary by EPA. Wells to be sampled must include all wells that might be used
6 for drinking water. The Drinking Water Sampling and Alternate Water Supply Work Plan must 1) set
7 forth the basis for excluding any water supply wells that are within the defined area in this Paragraph
8 for the initial sampling effort; 2) provide documentation of all efforts to determine the existence of
9 water supply wells not catalogued in Ecology well log files; and 3) specify the methodology for
10 determining the location of each drinking water well required to be sampled.

11 b. Analyses of samples of drinking water wells collected during the initial sampling
12 shall include, at minimum, chlorinated phenols (PCP and tetrachlorophenol). The scope, frequency
13 and parameters of the periodic re-sampling (any sampling after the initial sampling) of the wells in
14 area defined in Paragraph 51.a. above is to be determined by EPA based upon the initial data and the
15 results of the Site Investigation as it is developed, or based upon the provision of alternate water
16 supply to the well users. At a minimum, the Drinking Water Sampling and Alternate Water Supply
17 Work Plan shall include the procedures necessary for collecting and analyzing unfiltered, untreated
18 samples of each well included in the area defined in Paragraph 51.a. above, and any other additional
19 wells later determined by EPA to be included in the periodic sampling effort, for chlorinated phenols
20 (PCP and tetrachlorophenol) no less than semi-annually.

21 c. Validated sample results shall be provided to all well users, with a copy to EPA's
22 Project Manager simultaneously, as soon as possible, but no later than thirty (30) days from the date
23 of sample collection. A summary of the results shall also be included in the periodic reports to EPA
24 under Section XI (Periodic Reporting).

25 d. In the event that PCP is detected in any well, the contaminated well shall be
26 sampled no less than quarterly, unless otherwise determined by EPA.

27 e. The Drinking Water Sampling and Alternate Water Supply Work Plan shall

1 describe tasks necessary and include 1) a schedule for provision of alternate drinking water (such as
2 bottled water) to all of the users of every well contaminated with PCP at detectable levels; 2) full
3 replacement of water used for any purpose (a "whole house" safe water supply for the residence or
4 other building or location) for any well at which PCP exceeds 1.0 µg/L; and 3) description of other
5 response actions that may be appropriate (e.g. shutting off water to public drinking fountain).

6 f. In the event that provision of alternate water supply is required under this Paragraph
7 51., Respondent shall also document its acquisition and the provision of alternate water and provide
8 that documentation to EPA as part of its monthly reporting obligation under Section XI (Periodic
9 Reporting) of this Order. For example, if Respondent purchases bottled water, Respondent shall
10 provide to EPA all purchase receipts and/or invoices showing how much bottled water was purchased
11 and Respondent's expenditures for bottled water during the period covered by the report.

12 g. In the event that analysis of groundwater samples collected from any well available
13 for human consumption are contaminated with PCP above 1 µg/L (ppb), Respondent shall provide
14 signs that may be posted at these locations by the property owner within seven (7) days of the date
15 that Respondent obtains validated sample results. Respondent shall provide a sign for each well,
16 water tap, spigot, water hydrant, public toilet, water cooler, and any other location where water may
17 be obtained for human consumption. The signs to be posted shall be at least six (6) by 12 (twelve)
18 inches, and shall be made of weatherproof material in white or brightly colored background with
19 large, clearly contrasting lettering. The signs shall state in English or any other language specified or
20 requested by the well user(s):

21 **"Warning: This water is contaminated and unsafe for consumption. Do not drink."**

22 h. Provision of alternate water, and sampling and analysis of each well required to be
23 sampled (as adjusted by EPA as described in Paragraph 51. b. above) shall continue until no PCP is
24 detected in any well continuously for a two year period. If PCP continues to be detected in any well,
25 then Respondent must comply with the requirements of Paragraph 51. a. through g. for all wells
26 required to be sampled until the Corrective Measures Implementation Report is approved by EPA or
27 until determined by EPA to be no longer necessary.

1 i. The Drinking Water Sampling and Alternate Water Supply Work Plan shall also
2 include a schedule for all activities, including the submission of a Drinking Water Sampling and
3 Alternate Water Supply Report. The Drinking Water Sampling and Alternate Water Supply Report
4 shall be submitted thirty (30) days after the submission of the Corrective Measures Implementation
5 Report, unless otherwise specified by EPA. The contents of the Drinking Water Sampling and
6 Alternate Water Supply Report shall be proposed in the Drinking Water Sampling and Alternate
7 Water Supply Work Plan, but at minimum shall document Respondent's compliance with the
8 requirements set forth in this Order.

9 52. Site Investigation:

10 a. Within forty-five (45) days of the effective date of this Order Respondent shall
11 submit, for EPA review and approval a Site Investigation Work Plan, as more fully described in
12 Attachment B. The Site Investigation Work Plan must meet the objectives and general requirements
13 set forth in Attachment A and shall be developed in accordance with Attachment B. The Site
14 Investigation Work Plan shall include provisions for determining the nature and extent of
15 contamination in all media at the Site, and a schedule for all activities and Submittals.

16 b. The Site Investigation Work Plan shall include a conceptual Site model in
17 accordance with Attachment G.

18 c. The Site Investigation Work Plan shall include a Sampling and Analysis and Data
19 Management Plan to document all sampling, monitoring, analytical procedures. This Sampling and
20 Analysis and Data Management Plan shall be developed to ensure that all information, data, and
21 resulting decisions are technically sound, statistically valid and properly documented. See
22 Attachment C.

23 d. The results of the Site Investigation shall be submitted for EPA review and
24 approval in a Site Investigation Report to be submitted in accordance with the schedule contained in
25 the Site Investigation Work Plan.

26 e. EPA acknowledges that Respondent has previously collected information and
27 that may be appropriate for inclusion in the Work required by this Paragraph. This information and

1 valid data previously collected by Respondent may be included in the Work required by this Order,
2 subject to review and approval by EPA.

3 53. Corrective Measures Study:

4 a. Within sixty (60) days after Respondent receives notice of EPA's approval of the
5 final Site Investigation Report, Respondent shall submit a Draft Corrective Measures Study ("CMS")
6 Report to EPA. The Draft CMS Report shall identify, evaluate and recommend alternative Correctiv
7 Measures to address the releases that have been identified at the Site and shall be developed in
8 accordance with Attachment D and be subject to EPA review and approval.

9 b. After EPA issues its approval or modification and approval of the Draft CMS
10 Report, EPA will provide the public with an opportunity to submit written and/or oral comments and
11 an opportunity for a public meeting regarding EPA's proposed cleanup and performance standards,
12 the Draft CMS Report, and EPA's justification for choosing the Corrective Measures EPA selects (th
13 "Statement of Basis").

14 c. Following the public comment period, EPA may direct Respondent to finalize the
15 CMS Report incorporating comments received from EPA and require Respondent to implement the
16 recommended Corrective Measures contained in the EPA-approved Corrective Measures Study, or
17 require Respondent to perform additional Corrective Measures studies. Within thirty (30) days of
18 receipt of EPA's notice directing Respondent to finalize the CMS Report, Respondent shall submit a
19 Final CMS Report.

20 d. EPA will review and approve the Final CMS Report. Upon approval or
21 modification and approval of the Final CMS Report, EPA will notify Respondent of the final cleanup
22 standards, final performance standards, and approved Corrective Measures.

23 54. Corrective Measures Implementation:

24 a. Within sixty (60) days after Respondent's receipt of written notification of EPA's
25 approval or modification and approval of the Final CMS Report and selection of the Corrective
26 Measures, Respondent shall submit, for EPA review and approval, a Corrective Measures
27 Implementation ("CMI") Plan. The CMI Plan and other CMI requirements shall be prepared in

1 accordance with Attachment E and shall cover the design, construction, operation, maintenance and
2 monitoring of the performance of the Corrective Measures selected by EPA to protect human health
3 and the environment and shall include a schedule for all activities, including Submittals.

4 b. Notwithstanding any other provision in this Order, the Parties agree that if
5 conditions contained in Paragraph 54.c. below are met and Respondent does not want to implement
6 the final Corrective Measure selected by EPA under consent, Respondent may withdraw its consent to
7 implement said Corrective Measure. To be effective, such withdrawal of consent must be in writing,
8 signed by the company signatory to this Order, and received by the EPA Office of Waste and
9 Chemicals Management Director no later than fifteen (15) Business days from receipt of the final
10 dispute decision by EPA.

11 c. Respondent's right to withdraw its consent is limited to implementation of the
12 Corrective Measure selected by EPA only, and such right to withdraw shall not accrue until: (1) EPA
13 has selected a final Corrective Measure as provided in this Order; (2) and EPA issues a final decision
14 under the dispute resolution procedures contained in Section XVII. Nothing in this Section shall
15 affect or diminish Respondent's consent to any other provision of this Order, including its obligations
16 hereunder to conduct Interim Measures, an RFI, a CMS, additional work as provided in Section XXV
17 related to matters other than the Corrective Measures Implementation, or issuance of stipulated
18 penalties as provided for in Section XVIII.

19 d. As provided in Section XX (Reservation of Rights), EPA retains all authorities it
20 has under RCRA and CERCLA to enforce implementation of the Corrective Measure or conduct
21 response actions related to the Facility, including in the event that Respondent exercises its right to
22 withdraw its consent to implement the Corrective Measures as provided in this Section.

23 **VIII. IMPLEMENTATION OF ALL REQUIRED WORK**

24 55. Except as indicated in this Paragraph, all Work undertaken pursuant to this Order shall be
25 performed in accordance with: the provisions of this Order, including the attached Scopes of Work,
26 and any EPA-approved deliverables and Submittals; RCRA and other applicable laws and their
27 implementing regulations; and applicable EPA guidance documents. The Excess Stormwater

1 Management required by this Order may be conducted for the period of time specified in Paragraph
2 50.b., notwithstanding the applicable provisions of RCRA, provided that it is conducted in accordance
3 with the EPA-approved Excess Stormwater Management Work Plan. This provision only applies to
4 that Excess Stormwater that is collected and managed in accordance with this Order. All other
5 stormwater at the Facility is subject to all applicable legal requirements.

6 56. Each Work Plan shall include a schedule. After EPA approval of a Work Plan,
7 Respondent shall commence Work and implement the Work Plan in accordance with the schedule
8 and provisions approved by EPA.

9 57. Compliance with OSHA requirements: Each Work Plan shall be accompanied by a Health
10 and Safety Plan to be implemented during any Work performed under this Order and that shall be
11 consistent with applicable Occupational Safety and Health Administration (OSHA) regulations.
12 Respondent may incorporate by reference any previously submitted Health and Safety Plan to meet
13 this requirement in any Work Plan submitted after the initial Work Plan if the OSHA requirements
14 are met. All Work under approved Work Plans shall be consistent with applicable OSHA regulations
15 and state and local regulations.

16 58. Any deviations from an approved Work Plan must be approved by EPA prior to
17 implementation; must be documented, including reasons for the deviations; and must be reported in
18 the applicable reports, including progress reports.

19 59. Oral advice, suggestions, or comments given by EPA representatives will not constitute
20 an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

21 **IX. INTERIM MEASURES/STABILIZATION**

22 60. The Respondent shall evaluate existing data and new data as it becomes available and
23 assess the need for and opportunity for Interim Measures through the duration of this Order. Interim
24 Measures shall be used whenever possible to achieve the stabilization goals of controlling or abating
25 immediate threats to human health and/or the environment, and to prevent or minimize the spread of
26 contaminants while long-term Corrective Measures alternatives are being evaluated.

27 61. In the event Respondent identifies an immediate threat to human health or the

1 environment at any time while this Order is in effect, Respondent shall within twenty-four (24) hours
2 notify the EPA Project Manager, and shall notify EPA in writing within five (5) days of such
3 discovery describing the immediacy and magnitude of the identified threats and response actions to be
4 taken. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c)
5 of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community
6 Right-to-Know Act, 42 U.S.C. § 11004, et seq. Upon written request of EPA and in the time period
7 specified by EPA, Respondent shall submit to EPA an Interim Measures Work Plan that includes the
8 elements listed in Paragraph 62 below. If EPA determines that immediate action is required, the EPA
9 Project Manager may authorize Respondent to act prior to EPA's receipt of the Interim Measures
10 Work Plan. Such authorization by the EPA Project Manager will be in writing.

11 62. If EPA identifies an immediate or potential threat to human health and/or the
12 environment, or determines that Interim Measures are necessary to further the achievement of
13 stabilization goals as identified in Paragraph 60, EPA will notify Respondent in writing. Within
14 twenty (20) days (or by such other date as may be agreed to by the Parties) of receiving EPA's written
15 notification, Respondent shall submit to EPA an Interim Measures Work Plan that identifies
16 appropriate Interim Measures which will mitigate the threat. If EPA determines that immediate action
17 is required, the EPA Project Manager may require Respondent to act prior to Respondent's
18 submission of an Interim Measures Work Plan. Such requirement shall be set forth in EPA's written
19 notification. The Interim Measures Work Plan and activities conducted pursuant to this Order are
20 subject to EPA review and approval. The Interim Measures Work Plan shall include the following
21 sections:

- 22 a. Interim Measures Description and Objectives
- 23 b. Public Involvement Plan
- 24 c. Data Collection Quality Assurance
- 25 d. Data Management
- 26 e. Design Plans and Specifications
- 27 f. Operation and Maintenance Plan

- 1 g. Project Schedule
- 2 h. Interim Measures Construction Quality Assurance
- 3 i. Performance Standards to be used in evaluating the effectiveness of the Interi
- 4 Measures;
- 5 j. Reporting Requirements.

6 Deviations from these requirements may be made only with prior EPA approval, based on the
7 nature of the Interim Measures. EPA will attempt to promptly review and act upon such requests.

8 63. If at any time Respondent identifies the need or opportunity to conduct Interim Measure
9 then Respondent shall submit a written request to EPA for review and approval of the proposed
10 action, unless emergency action is required. Respondent shall secure prior written EPA approval to
11 perform any interim or stabilization measure or other work at the Facility. This requirement shall not
12 apply to normal maintenance and operation activities, to the extent that these activities do not affect
13 interim, stabilization or Corrective Measures, or investigations carried out pursuant to this Order.

14 64. To the maximum extent practicable, Interim Measures should be consistent with and
15 capable of being integrated into any long-term Corrective Measures at the Facility.

16 **X. SAMPLING/QUALITY ASSURANCE/FIELD ACTIVITIES**

17 65. Each Work Plan shall include a Quality Assurance Project Plan ("QAPP"), for EPA
18 review and approval, addressing quality assurance, quality control, and chain of custody procedures
19 for all sampling, monitoring and analytical activities. Respondent shall follow EPA guidance for
20 sampling and analysis in accordance with "EPA Requirements for Quality Assurance Project Plans"
21 [EPA QA/R-5 (August 1994)], as well as other applicable guidance identified by EPA. EPA guidance
22 documents related to quality assurance and sampling can be found on the Internet at:

23 www.epa.gov/r10earth/offices/oea/r0qahome.htm

24 66. The name, address, and telephone number of each analytical laboratory Respondent
25 proposes to use must be specified in the applicable Work Plan.

26 67. All Work Plans required under this Order shall include Data Quality Objectives for each
27 data collection activity to ensure that data of known and appropriate quality are obtained and that data

1 are sufficient to support their intended use.

2 68. Respondent shall monitor to ensure that high quality data is obtained by its consultant or
3 contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis
4 perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid
5 Waste (SW-846)", or other methods deemed satisfactory to EPA. If methods other than EPA methods
6 are to be used, Respondent shall specify all such protocols in the applicable Work Plan. EPA may
7 reject any data that does not meet the requirements of the approved Work Plan and EPA analytical
8 methods and may require resampling and additional analysis.

9 69. Respondent shall ensure that all laboratories it uses for analyses participate in a quality
10 assurance/quality control program equivalent to that which is followed by EPA. Respondent shall
11 upon request by EPA, make arrangements for EPA to conduct a performance and quality
12 assurance/quality control audit of the laboratories chosen by Respondent before, during, or after
13 sample analyses. Upon request by EPA, Respondent shall have its laboratories perform analyses
14 samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in
15 a laboratory's performance or quality assurance/quality control, Respondent shall submit a plan to
16 address the deficiencies and EPA may require resampling and additional analysis.

17 70. Respondent shall notify EPA, in writing, at least ten (10) days before engaging in any
18 field activities, such as well drilling, installation of equipment, or sampling. If the time or date for the
19 field activity changes after the required notification has been given to EPA, Respondent must notify
20 EPA of the change as soon as Respondent becomes aware of the change, but in no event later than
21 twenty-four (24) hours before the field activity is scheduled to occur. If Respondent believes it must
22 commence emergency field activities without delay, Respondent may seek emergency telephone
23 authorization from the EPA Project Manager or, if the EPA Project Manager is unavailable, her Unit
24 Manager (Jamie Sikorski at (206) 553-5153) to commence such activities immediately. At the
25 request of EPA, Respondent shall provide or allow EPA to take split samples or duplicate samples of
26 all samples collected by Respondent pursuant to this Order. Similarly, at the request of Respondent
27 EPA shall allow Respondent or its authorized representatives to take split or duplicate samples of all

1 samples collected by EPA under this Order.

2 **XI. PERIODIC REPORTING**

3 71. Progress Reports: Respondent shall submit a written progress report to EPA concernin
4 actions undertaken pursuant to this Order on the 15th of every month after the effective date of this
5 Order until termination of this Order, unless otherwise directed by the EPA Project Manager. These
6 reports shall describe all significant developments during the preceding period, including the actions
7 performed and any problems encountered for all Work required by this Order, and the developments
8 anticipated during the next reporting period including a schedule of actions to be performed,
9 anticipated problems, and planned resolutions of past or anticipated problems. In addition, these
10 reports shall include all information specified in this Order for inclusion in the periodic progress
11 reports, including but not limited to the results of all sampling or tests and all other data generated by
12 Respondent or its Contractors, or on Respondent's behalf received during the reporting period.

13 **XII. EPA APPROVAL OF PLANS AND OTHER SUBMITTALS**

14 72. After review of any plan, report, or other item which is required to be submitted for
15 approval pursuant to this Order, EPA, shall: (a) approve the Submittal; (b) approve the Submittal
16 upon specified conditions; (c) modify the Submittal to cure the deficiencies; (d) disapprove, in whole
17 or in part, the Submittal, directing that the Respondent modify the Submittal; or (e) any combination
18 of the above. EPA may also require approval for the periodic progress reports required by Section X
19 (Periodic Reporting) and exercise the process set forth in this Section in the event that EPA
20 determines that such action is necessary.

21 73. Upon receipt of approval, approval upon conditions, or modification by EPA, pursuant to
22 Paragraph 72.(a), (b), or (c), Respondent shall proceed to take any action required by the plan, report
23 or other item, as approved or modified by EPA subject only to its right to invoke the Dispute
24 Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the
25 modifications or conditions made by EPA.

26 74. a. Upon receipt of a notice of disapproval pursuant to Paragraph 72.(d), for the Exce
27 Stormwater Management and the Drinking Water Sampling and Alternate Water Supply Submittals,

1 Respondent shall, within fifteen (15) days or such longer time as specified by EPA in such notice,
2 correct the deficiencies in accordance with EPA's comments and directions and resubmit the plan,
3 report, or other item for approval. Upon receipt of a notice of disapproval pursuant to Paragraph
4 72.(d), for any other Submittal, Respondent shall, within thirty (30) days or such longer time as
5 specified by EPA in such notice, correct the deficiencies in accordance with EPA's comments and
6 directions and resubmit the plan, report, or other item for approval. Any stipulated penalties
7 applicable to the Submittal, as provided in Section XVIII (Stipulated and Statutory Penalties), shall
8 continue to accrue during the period of time that the Respondent is given to correct the deficiencies,
9 except in the case of the initial submission of: 1) the Site Investigation Work Plan; 2) the
10 comprehensive stand alone data document described in Paragraph C. of Attachment B; and, 3) the
11 stand alone data document addendum described in Paragraph C. of Attachment B.

12 b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 72.(d)
13 Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient
14 portion of the Submittal. Implementation of any non-deficient portion of a Submittal shall not relieve
15 Respondent of any liability for stipulated penalties under Section XVIII (Stipulated and Statutory
16 Penalties).

17 75. In the event that a resubmitted plan, report, or other item, or portion thereof, is
18 disapproved by EPA, EPA may again require the Respondent to correct the deficiencies, in
19 accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan,
20 report, or other item. Respondent shall implement any such plan, report, or item as modified or
21 developed by EPA, subject only to its right to invoke the procedures set forth in Section XVII
22 (Dispute Resolution).

23 76. If upon resubmission, a plan, report, or item is disapproved or modified by EPA,
24 Respondent shall be deemed to have failed to submit such plan, report, or item timely and adequately
25 unless the Respondent invokes the dispute resolution procedures set forth in Section XVII (Dispute
26 Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section X
27 (Dispute Resolution) and Section XVIII (Stipulated and Statutory Penalties) shall govern the

1 implementation of the plan, report or item, and accrual and payment of any stipulated penalties during
2 Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue
3 for such Violation from the date on which the Submittal was originally required, as provided in
4 Section XVIII (Stipulated and Statutory Penalties).

5 77. All plans, reports, and other items required to be submitted to EPA under this Order shall
6 upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves
7 or modifies a portion of a plan, report, or other item required to be submitted to EPA under this
8 Order, the approved or modified portion shall be enforceable under this Order.

9 XIII. ACCESS TO PROPERTY

10 78. Respondent shall provide access at reasonable times to the Facility and to all records and
11 documentation in its possession or control, including those records and documents in the possession
12 or control of Respondent's Contractors and employees, related to the conditions at the Site and the
13 actions conducted pursuant to this Order for the sole purpose of the oversight, implementation, and
14 enforcement of this Order. Respondent shall use its best efforts to gain access to areas owned or in
15 the possession of someone other than Respondent, as necessary to implement this Order, as described
16 in Paragraph 79. Such access shall be provided to EPA employees, contractors, agents, consultants,
17 designers, representatives, and State of Washington representatives. These individuals shall be
18 permitted to move freely at the Facility and appropriate off-site areas in order to conduct actions
19 which EPA determines to be necessary. These individuals shall notify Respondent of their presence
20 on the Facility by presenting their credentials, logging in and out at the plant office when entering or
21 leaving the Facility, and shall allow Respondent's representative to accompany them. Respondent's
22 representative will not impede the free movement of individuals on the Facility. Within fifteen (15)
23 Business days of Respondent's execution of the Order. Respondent shall send to EPA a copy of its
24 ~~safety regulations for the Facility. EPA shall acknowledge in writing receipt of Respondent's safety~~
25 regulations.

26 79. Where action under this Order is to be performed in areas owned by, or in possession of,
27 someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access

1 agreements within thirty (30) days of approval of any Work Plan for which access is required, or as
2 otherwise specified, in writing, by the EPA Project Manager. Any such access agreement shall
3 provide for access by EPA and its representatives to move freely in order to conduct actions which
4 EPA determines to be necessary. Respondent shall provide EPA's Project Manager with copies of
5 any access agreements. Respondent shall immediately notify EPA if after using its best efforts it is
6 unable to obtain such agreements within the time required. Best efforts as used in this Paragraph shall
7 include, at a minimum, a certified letter from Respondent to the present owners of such property
8 requesting access agreements to permit Respondent, EPA, and its authorized representatives to access
9 such property, and the payment of reasonable sums of money in consideration of granting access. In
10 addition to immediately notifying EPA, Respondent shall, within ten (10) days of the its immediate
11 notice, submit in writing, a description of its efforts to obtain access. EPA may, at its discretion,
12 assist Respondent in obtaining access. In the event EPA obtains access, Respondent shall undertake
13 EPA-approved Work on such property and Respondent shall reimburse EPA for all costs and att
14 fees incurred by the United States in obtaining such access.

15 80. The Respondent agrees to indemnify the United States as provided in Section XXII
16 (Indemnification) for any and all claims arising from activities on such property.

17 81. Nothing in this Section limits or otherwise affects EPA's right of access and entry
18 pursuant to applicable law, including but not limited to RCRA and CERCLA.

19 82. Nothing in this Section shall be construed to limit or otherwise affect Respondent's
20 liability and obligation to perform Corrective Measures including Corrective Measures beyond the
21 Facility boundary, notwithstanding the lack of access, unless the lack of access is determined by EPA
22 to be a Force Majeure in accordance with Section XIX (Force Majeure).

23

XIV. RECORD RETENTION, DOCUMENTATION AND 24 AVAILABILITY OF INFORMATION

25 83. Respondent shall preserve all documents and information relating to Work performed
26 under this Order, or relating to any Solid Waste or Hazardous Waste found at the Site, for six (6)
27 years following completion of the actions required by this Order. At the end of this six (6) year

1 period and ninety (90) days before any document or information is destroyed, Respondent shall notif
2 EPA that such documents and information are available to EPA for inspection, and upon request,
3 shall provide the originals or copies of such documents and information to EPA. Such written
4 notification shall reference the effective date, caption, and docket number of this Order and shall be
5 addressed to the Director, Office of Waste and Chemicals Management, U.S. Environmental
6 Protection Agency, Region 10. In addition, Respondent shall provide documents and information
7 retained under this Section at any time before expiration of the six (6) year period at the written
8 request of EPA.

9 84. Respondent further agrees that within thirty (30) days of retaining or employing any ager
10 consultant, or Contractor for the purpose of carrying out the terms of this Order, Respondent shall
11 enter into an agreement with any such agent, consultant, or Contractor whereby such agent,
12 consultant, or Contractor will be required to provide Respondent a copy of all documents produced
13 pursuant to this Order.

14 85. All documents pertaining to this Order shall be stored by the Respondent in a centralized
15 location at the Facility to facilitate access by EPA or its representatives.

16 86. Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b)
17 with respect to part or all of any information submitted to EPA pursuant to this Order. Any assertion
18 of confidentiality must be accompanied by information that satisfies the items listed in 40 C.F.R.
19 § 2.204(e)(4) or such claim shall be deemed waived. Analytical and other data shall not be claimed
20 as confidential by the Respondent. EPA shall disclose information covered by a business
21 confidentiality claim only to the extent permitted by, and by means of, the procedures set forth at 40
22 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA,
23 EPA may make it available to the public without further notice to Respondent. Respondent shall
24 ~~maintain a running log of privileged documents on a document-by-document basis, containing the~~
25 date, authors, addressees, subject, the privilege or grounds claimed (e.g., attorney work product,
26 attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the
27 "privilege log" on file and available for inspection. EPA may at any time challenge claims of

1 privilege. Failure to maintain this log shall not constitute a waiver of privilege.

2 **XV. NOTIFICATION AND DOCUMENT CERTIFICATION**

3 87. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices,
4 or other Submittals relating to or required under this Order shall be in writing and shall be sent to the
5 EPA's Project Manager as specified in Paragraph 49.d. above. Reports, correspondence, notices or
6 other Submittals shall be delivered by hand, placed in overnight courier service, or sent by telefax
7 with complete receipt verified by EPA's Project Manager or if she is not available, then her manager,
8 Jamie Sikorski, and followed by a hard copy. Deadlines for Respondent's Submittals shall run from
9 the date Respondent actually received the triggering notice from EPA.

10 88. With regard to submissions of plans, reports or other documents by a specified time, EPA
11 must be in receipt of the document by the time specified in this Order for Respondent to be in
12 compliance with this Order.

13 89. Any report or other document submitted by Respondent pursuant to this Order which
14 makes any representation concerning Respondent's compliance or noncompliance with any
15 requirement of this Order shall be certified by a responsible corporate officer of Respondent. A
16 responsible corporate officer means: a president, secretary, treasurer, or vice-president of the limited
17 partnership in charge of a principal business function, or any other person who performs similar
18 policy or decision-making functions for the limited partnership.

19 90. The certification required by Paragraph 89. above, shall be in the following form:

20 "I certify that this document and all attachments were prepared under my direction or
21 supervision in accordance with a system designed to evaluate the information submitted. I
22 certify that the information contained in or accompanying this submittal is true, accurate, and
23 complete. As to those identified portion(s) of this submittal for which I cannot personally
24 verify the accuracy, I certify that this submittal and all attachments were prepared in
25 accordance with procedures designed to assure that qualified personnel properly gathered and
26 evaluated the information submitted. Based on my inquiry of the person or persons who
27 manage the system, or those directly responsible for gathering the information, or the
immediate supervisor of such person(s), the information submitted is, to the best of my
knowledge and belief, true, accurate, and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of fine and imprisonment
for knowing violations."

Signature: _____

Name: _____

Title: _____

Date: _____

XVI. COMPLIANCE WITH OTHER LAWS

91. Except as specified in Section VIII (Implementation of All Work Required), Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XVII. DISPUTE RESOLUTION

92. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of Respondent that have not been disputed in accordance with this Section. The Parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order. If the Respondent objects to any EPA action taken pursuant to this Order, Respondent shall notify EPA, in writing, of its objections within ten (10) Business days of the date Respondent received notice of EPA's action to which it is objecting. Respondent's notification in writing of its objections shall be the only action that establishes that a dispute exists for purposes of this Section. Any dispute arising under this Order shall first be subject to informal negotiations between the Parties. The period for informal negotiations shall not exceed twenty (20) Business days from the date of written notification to EPA, unless extended by EPA. The dispute shall be considered to have arisen when EPA receives written notice of Respondent's objections.

93. In the event that the Parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be binding unless, within five (5) Business days after the conclusion of the informal negotiation period, Respondent invokes the formal dispute resolution procedures of this Section by serving on EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Respondent.

1 94. If Respondent fails to follow any of the requirements contained in this Section, then it
2 shall have waived its right to avail itself of the dispute resolution provisions in this Order.

3 95. EPA may also serve on Respondent its Statement of Position, including, but not limited
4 to, any factual data, analysis, or opinion supporting that position and any supporting documentation
5 relied upon by EPA. An administrative record of the dispute will be maintained by EPA and will
6 contain all statements of position, including supporting documentation, submitted pursuant to this
7 Section.

8 96. If the Parties reach agreement on the dispute at any stage, the agreement shall be set forth
9 in writing, and shall, upon signature of both Parties, be incorporated into and become an enforceable
10 part of this Order.

11 97. The Parties will have twenty-eight (28) days after EPA's receipt of Respondent's
12 Statement of Position, or such longer period of time as agreed to by both Parties, to reach an
13 agreement. If no agreement is reached, EPA's Director of the Office of Waste and Chemicals
14 Management will issue a written decision on the dispute at some time after the impasse. The decision
15 of EPA shall be incorporated into and become an enforceable part of this Order and shall no longer be
16 subject to dispute. Following resolution of the dispute, as provided by this Section, Respondent shall
17 fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or
18 with EPA's decision, whichever occurs.

19 98. Except as provided in Section XVIII (Stipulated and Statutory Penalties), the existence of
20 a dispute and EPA's consideration of matters placed in dispute shall not excuse, toll, or suspend any
21 compliance obligation or deadline required pursuant to this Order during the pendency of the dispute
22 resolution process except as agreed by EPA in writing.

23 **XVIII. STIPULATED AND STATUTORY PENALTIES**

24 99. Respondent shall be liable for stipulated penalties in the amounts set forth below any time
25 Respondent fails to comply with any requirement of this Order, unless a Force Majeure has occurred
26 as defined in Section XIX (Force Majeure) and EPA has approved the extension of a deadline as
27 required by Section XIX (Force Majeure). Compliance by Respondent shall include completion of an

1 activity or any matter under this Order in a manner acceptable to EPA, and within the specified time
2 schedules in and approved under this Order.

3 a. For failure to submit to EPA any Submittal (except the initial submission of: 1) the
4 Site Investigation Work Plan required in Paragraph 52., 2) the comprehensive stand alone data
5 document described in Paragraph C. of Attachment B; and, 3) the stand alone data document
6 addendum described in Paragraph C. of Attachment B.; and any progress reports required in Section
7 XI (Periodic Reporting)) required by this Order, including the Attachments:

- 8 i. \$ 500 per day for the first through tenth days of noncompliance;
- 9 ii. \$1,250 per day for the eleventh through twenty-first days of noncompliance
- 10 iii. \$2,500 per day for the twenty-second day and each succeeding day of
11 noncompliance thereafter.

12 b. For failure to submit a progress report required in Section XI (Periodic Reporting)
13 as required:

- 14 i. \$250 per day for the first through tenth days of noncompliance;
- 15 ii. \$500 per day for the eleventh through twenty-first days of noncompliance;
- 16 iii. \$1,000 per day for the twenty-second day and each succeeding day of
17 noncompliance thereafter.

18 c. For failure to commence, perform, and/or complete the Work specified in any Work
19 Plan submitted pursuant to this Order, as required:

- 20 i. \$1,000 per day for the first through tenth days of noncompliance;
- 21 ii. \$1,750 per day for the eleventh through twenty-first days of noncompliance
- 22 iii. \$2,500 per day for the twenty-second day and each succeeding day of
23 noncompliance thereafter.

24 d. For failure to comply with any other provision of this Order:

- 25 i. \$ 500 per day for the first through tenth days of noncompliance;
- 26 ii. \$1,250 per day for the eleventh through twenty-first days of noncompliance
- 27 iii. \$2,500 per day for the twenty-second day and each succeeding day of

1 noncompliance thereafter.

2 100. Penalties shall begin to accrue on the day after the complete performance is due or the
3 day a Violation occurs, and shall continue to accrue through the final day of correction of the
4 Violation or completion of the activity. Stipulated penalties shall not accrue, however, (1) with
5 respect to a deficient Submittal of the initial Site Investigation Work Plan, the initial comprehensive
6 stand alone data document and the initial stand alone data document addendum (the latter two are
7 described in Paragraph C. of Attachment B); (2) with respect to a deficient Submittal under Section
8 XII (EPA Approval of Plans and Other Submittals), during the period, if any, beginning on the thirty-
9 first (31st) day after EPA's receipt of such Submittal until the date that EPA notifies Respondent of
10 any deficiency; (3) with respect to a decision by the Director of the Office of Waste and Chemicals
11 Management, under Paragraph 97. of Section XVII (Dispute Resolution), during the period, if any,
12 beginning on the twenty-first (21st) day after the date that EPA receives Respondent's Statement of
13 Position until the date that the Director issues a final decision regarding such dispute; (4) with res
14 to the Corrective Measures Implementation in the event that Respondent exercises its right to
15 withdraw its consent to implement the selected Corrective Measures in accordance with Paragraphs
16 54.b. through 54.d.; or (5) with regard to disputed claims under the Trust Agreement as provided for
17 in Paragraph 132.

18 101. Penalties shall continue to accrue as provided in Paragraph 100. during any dispute
19 resolution period.

20 102. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for
21 separate Violations of this Order, even where those Violations concern the same event (e.g.,
22 submission of a Work Plan that is late and of unacceptable quality). Penalties shall continue to accrue
23 regardless of whether EPA has notified the Respondent of a Violation.

24 103. All penalties owed to the United States under this Section shall be due and payable
25 within thirty (30) days of the Respondent's receipt from EPA of a written demand for payment of the
26 penalties, unless Respondent invokes the dispute resolution procedures under Section XVII (Dis
27 Resolution), in which case payment shall be made within thirty (30) days after the date of agreement

1 between the Parties or decision of EPA resolving the dispute. Such written demand, agreement or
2 decision will describe the Violation and will indicate the amount of penalties due.

3 104. If payment is not made within thirty (30) days of the date of Respondent's receipt from
4 EPA of a written demand for payment of the penalties or of the date of agreement or decision
5 resolving the dispute, interest shall begin to accrue on any unpaid stipulated penalty balance
6 beginning on the first day after Respondent's receipt of EPA's demand letter, or the date of the
7 agreement or decision resolving the dispute, and will accrue until such penalties and interest have
8 been paid in full. Interest shall accrue at the Current Value of Funds Rate established by the Secreta
9 of the Treasury. Pursuant to 31 U.S.C. § 3717, and additional penalty of six percent (6 %) per annu
10 on any unpaid principal shall be assessed for any stipulated penalty payment which is overdue for
11 ninety (90) days or more.

12 105. All penalties shall be made payable by certified or cashier's check to the United States c
13 America and shall be remitted to:

14 Mellon Bank Center
15 EPA, Region 10
16 3 Mellon Bank
P.O. Box 360903-M
Pittsburgh, Pennsylvania 15251

17 All such checks shall reference the name of the Facility, the Respondent's name and address, and the
18 EPA docket number of this action. Copies of all such checks and letters forwarding the checks shall
19 be sent simultaneously to the EPA Project Manager.

20 106. Respondent may dispute EPA's assessment of stipulated penalties by invoking the
21 dispute resolution procedures under Section XVII (Dispute Resolution) unless the matter has already
22 been in dispute resolution.

23 107. Neither the invocation of dispute resolution nor the payment of penalties shall alter in
24 any way Respondent's obligation to comply with the terms and conditions of this Order.

25 108. The stipulated penalties set forth in this Section do not preclude EPA from pursuing an
26 other remedies or sanctions which may be available to EPA by reason of Respondent's failure to
27 comply with any of the terms and conditions of this Order.

1 109. No payments under this Section shall be deducted for federal tax purposes.

2 110. Notwithstanding any other provision of this Section, EPA may, in its unreviewable
3 discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

4 111. Violation of any provision of this Order may subject Respondent to civil penalties of up
5 to seven thousand five hundred dollars (\$ 7,500.00) per Violation per day, as provided in Section
6 7003(b) of RCRA, 42 U.S.C. § 6973(b), provided, however, that in the event that stipulated penalties
7 are assessed for a Violation, then any amount of statutory penalties sought by EPA for that Violation
8 will be reduced by the amount of the stipulated penalties already paid by Respondent for that
9 Violation. Should Respondent violate this Order or any portion hereof, EPA may carry out the
10 required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, or other
11 applicable authorities, and/or may seek judicial enforcement of this Order pursuant to Section 7003 of
12 RCRA, 42 U.S.C. § 6973.

13 **XIX. FORCE MAJEURE**

14 112. Respondent agrees to perform all requirements under this Order within the time limits
15 established under this Order, unless the performance is delayed by a Force Majeure. For purposes of
16 this Order, a Force Majeure is defined as any event arising from causes beyond the control of
17 Respondent, including but not limited to its Contractors, that delays or prevents performance of any
18 obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force Majeure
19 does not include financial inability to complete the Work or increased cost of performance or any
20 changes in Respondent's business or economic circumstances. Force Majeure may include the failure
21 to obtain the necessary permits to conduct the Work within the time-frames required, but only if the
22 such failure is beyond the control of the Respondent, including but not limited to its Contractors, and
23 is despite Respondent's best efforts to fulfill the obligation. Force Majeure may also include the
24 failure to obtain access, but only if such failure is beyond the control of the Respondent, including but
25 not limited to its Contractors, and is despite Respondent's best efforts as described in Paragraph 79.

26 113. Respondent shall notify EPA orally within forty-eight (48) hours, and in writing with
27 five (5) Business days after Respondent becomes or should have become aware of the event that

1 might cause a delay and which may constitute a Force Majeure. Such notice shall: identify the even
2 causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; provide
3 Respondent's rationale for attributing such delay to a Force Majeure event; state the measures taken
4 or to be taken to prevent or minimize the delay; and estimate the timetable for implementation of
5 those measures. Respondent shall undertake best efforts to avoid and minimize the delay. Failure to
6 comply with the notice provision of this action shall waive any claim of Force Majeure by the
7 Respondent. Respondent shall be deemed to have notice of any circumstances of which its
8 Contractors had or should have had notice.

9 114. If EPA determines that a delay in performance or anticipated delay of a requirement
10 under this Order is or was attributable to a Force Majeure, the time period for performance of that
11 requirement will be extended as deemed necessary by EPA. If EPA determines that the delay or
12 anticipated delay has been or will be caused by a Force Majeure, EPA will notify Respondent, in
13 writing, of the length of the extension, if any, for performance of such obligations affected by the
14 Force Majeure. Any such extensions shall not alter Respondent's obligation to perform or complete
15 other tasks required by the Order which are not directly affected by the Force Majeure.

16 115. If EPA disagrees with Respondent's assertion of a Force Majeure, EPA will provide
17 notice of such disagreement in writing. If EPA provides such notice, Respondent may elect to invoke
18 the dispute resolution provision, and shall follow the time frames set forth in Section XVII (Dispute
19 Resolution). In any such proceeding, Respondent shall have the burden of demonstrating by a
20 preponderance of the evidence that the delay or anticipated delay has been or will be caused by a
21 Force Majeure, that the duration of the delay or the extension sought was or will be warranted under
22 the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
23 that Respondent complied with the requirements of this Section. If Respondent satisfies this burden,
24 the time for performance of such obligation will be extended by EPA for such time as is necessary to
25 complete such obligation as determined by EPA.

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1 or authorized by EPA.

2 122. If EPA determines that activities in compliance or noncompliance with this Order have
3 caused or may cause a release of Hazardous Waste or Hazardous Constituents, or a threat to human
4 health and/or the environment, or that Respondent is not capable of undertaking any of the Work
5 ordered, EPA may order Respondent to stop further implementation of this Order for such period of
6 time as EPA determines may be needed to abate any such release or threat and/or to undertake any
7 action which EPA determines is necessary to abate such release or threat.

8 123. This Order is not intended to be nor shall it be construed to be a permit. The Parties
9 acknowledge and agree that EPA's approval of any Work Plan does not constitute a warranty or
10 representation that the Work Plans will achieve the required cleanup or performance standards.
11 Compliance by Respondent with the terms of this Order shall not relieve Respondent of its
12 obligations to comply with RCRA or any other applicable local, State, or federal laws and regulation
13 except as provided in Paragraph 55.

14 124. By signing this Order and taking actions under this Order, the Respondent does not
15 necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the
16 participation of Respondent in this Order shall not be considered an admission of liability and is not
17 admissible in evidence against Respondent in any judicial or administrative proceeding other than a
18 proceeding by the United States, including EPA, to enforce this Order or a judgment relating to it.
19 However, Respondent agrees not to contest the validity or terms of this Order, or the procedures
20 underlying or relating to it in any action brought by the United States, including EPA, to enforce its
21 terms.

22 125. Notwithstanding any other provision of this Order, no action or decision by EPA
23 pursuant to this Order, including without limitation, decisions of the Regional Administrator, the
24 ~~Director of the Waste & Chemicals Management Office, or any authorized representative of EPA,~~
25 shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation
26 of a judicial action to enforce this Order, including an action for penalties or an action to compel
27 Respondent's compliance with the terms and conditions of this Order.

1 126. In any subsequent administrative or judicial proceeding initiated by the United States for
2 injunctive or other appropriate relief relating to the Facility, Respondent shall not assert, and may not
3 maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel,
4 issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised
5 by the United States in the subsequent proceeding were or should have been raised in the present
6 matter.

XXI. OTHER CLAIMS

127. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, Contractors, or consultants in carrying out actions pursuant to this Order.

13 128. Nothing in this Order constitutes a satisfaction or release from any claim or cause of
14 action against the Respondent or any person not a party to this Order, for any liability such person
15 may have under RCRA, CERCLA, other statutes, or the common law, including, but not limited to,
16 any claims of the United States for costs, damages, and interest under Sections 106(a) and 107(a) of
17 CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

18 129. This Order does not constitute a preauthorization of funds under Section 111(a)(2) of
19 CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent(s) waive(s) any claim to payment under Sections
20 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States
21 or the Hazardous Substance Superfund arising out of any action performed under this Order.

XXII. INDEMNIFICATION

23 130. Respondent agrees to indemnify, save and hold harmless the United States, its officials,
24 agents, Contractors, employees, and representatives from any and all claims or causes of action: (a)
25 arising from, or on account of, acts or omissions of Respondent, Respondent's officers, heirs,
26 directors, employees, agents, Contractors, receivers, trustees, successors or assigns, in carrying on
27 actions pursuant to this Order; and (b) for damages or reimbursement arising from or on account of

1 any contract, agreement, or arrangement between (any one or more of) Respondent, and any person
2 for performance of work on or relating to the Site, including claims on account of construction delay
3 In addition, Respondent agrees to pay the United States all costs incurred by the United States,
4 including litigation costs arising from or on account of claims made against the United States based
5 on any of the acts or omissions referred to in the preceding sentence.

6 **XXIII. INSURANCE**

7 131. At least seven (7) days prior to commencing any on-Site Work under this Order, the
8 Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general
9 liability insurance and automobile insurance with limits of \$ 3 million dollars, combined single limit.
10 Within the same time period, the Respondent shall provide EPA with certificates of such insurance
11 and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to EPA
12 that its Contractor maintains insurance equivalent to that described above, or insurance covering some
13 or all of the same risks but in an equal or lesser amount, then the Respondent need provide only that
14 portion of the insurance described above which is not maintained by such Contractor.

15 **XXIV. FINANCIAL ASSURANCE**

16 132. Within thirty (30) days after the effective date of this Order, Respondent shall establish
17 the financial assurance for the Drinking Water Sampling and Alternate Water Supply Plan, the Site
18 Investigation, and the Corrective Measures Study in the form of the Trust Agreement attached to this
19 Order as Attachment I. The initial deposit to the Trust Fund shall be five-hundred thousand dollars
20 (\$500,000). Respondent shall make two additional payments into the Trust Fund within twelve and
21 eighteen months, respectively, of the effective date of this Order of two-hundred and fifty thousand
22 dollars (\$250,000) each.

23 133. Funds shall be withdrawn from the Trust to pay for Work required under this Order in
24 accordance with the payment provisions in the Trust Agreement.

25 134. Within sixty (60) days of receiving approval of the final CMS Report, Respondent shall
26 submit to EPA for review and approval a written cost estimate and proposed plan for financial
27 assurance for the Corrective Measures Implementation Plan.

1 135. The cost estimate for the selected Corrective Measures must include the costs to
2 Respondent of hiring an independent third party to satisfactorily perform all activities the costs of
3 which are required to be included in the respective cost estimate. An independent third party is a
4 party who is neither a parent nor a subsidiary of Respondent.

5 136. The previous financial assurance mechanism will remain in place until Respondent has
6 established a new instrument in accordance with EPA's approval or until Respondent has withdrawn
7 its consent to implement said Corrective Measures in accordance with Paragraph 54.b. at which time
8 the instrument will terminate in accordance with the terms of the instrument.

9 137. Each financial instrument obtained pursuant to this Section must be established and used
10 solely for the purpose of conducting the activities required by this Order at and for this Facility. Each
11 financial instrument obtained pursuant to this Section must be consistent with 40 C.F.R. § 265.145 to
12 the extent determined appropriate by EPA. Each financial assurance instrument established and
13 maintained by Respondent in accordance with this Section must allow the funds provided in the
14 financial assurance to be available in the event that Respondent proves unable or unwilling to
15 undertake any actions prescribed in this Order while it is in effect so that the activities covered by the
16 instrument may be completed by Respondent or EPA as determined by EPA.

17 138. A copy of each notices, claim certificates or any other document related to the financial
18 assurance required by this Section shall be delivered to:

19
20 Kim Ogle
21 Project Manager
22 Mail Stop WCM-126
23 U.S. Environmental Protection Agency, Region 10
24 1200 Sixth Avenue
25 Seattle, Washington 98101

26 Jennifer G. MacDonald
27 Assistant Regional Counsel
 Mail Stop ORC-158
 U.S. Environmental Protection Agency, Region 10
 1200 Sixth Avenue
 Seattle, Washington 98101

1 Regional Administrator
2 Mail Stop
3 U.S. Environmental Protection Agency, Region 10
4 1200 Sixth Avenue
5 Seattle, Washington 98101

6 **XXV. MODIFICATION**

7 139. This Order may only be modified by mutual agreement of EPA and Respondent. Any
8 agreed modifications shall be in writing, be signed by both Parties, shall have as their effective date
9 the date on which they are signed by EPA, and shall be incorporated into this Order.

10 140. Any requests for a compliance date modification or revision of an approved Work Plan
11 requirement must be made in writing. Such requests must be timely and provide justification for any
12 proposed compliance date modification or Work Plan revision. EPA has no obligation to approve
13 such requests, but if it does so, such approval must be in writing. Any approved compliance date or
14 Work Plan modification shall be incorporated by reference into this Order.

15 141. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans,
16 specifications, schedules, or any other writing submitted by the Respondent shall relieve the
17 Respondent of its obligation to obtain such formal approval as may be required by this Order, and to
18 comply with all requirements of this Order unless it is formally modified.

19 **XXVI. ADDITIONAL ACTION**

20 142. EPA may determine or Respondent may propose that certain tasks, including
21 investigatory work, engineering evaluation, or procedure/methodology modifications, are necessary
22 in addition to or in lieu of the tasks included in any EPA-approved Work Plan when such additional
23 work is necessary to meet the purposes set forth in Section IV (Statement of Purpose). EPA may
24 determine that Respondent shall perform the additional work and EPA will specify, in writing, the
25 basis for its determination that the additional work is necessary. Within five (5) days after the receipt
26 of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss
27 the additional work. If required by EPA, Respondent shall submit for EPA approval a Work Plan for
the additional work. Such Work Plan shall be submitted within thirty (30) days of receipt of EPA's
determination that additional work is necessary, or according to an alternative schedule established by

EPA. Upon approval of a Work Plan, Respondent shall implement it in accordance with the schedule and provisions contained therein.

XXVII. TERMINATION AND SATISFACTION

143. The provisions of this Order shall be deemed satisfied by Respondent on written notice from EPA that Respondent has demonstrated that all of the terms of this Order including any additional work as may be performed pursuant to Section XXVI (Additional Work) of this Order, have been completed to the satisfaction of EPA. Termination of this Order shall not, however, terminate Respondent's obligation to comply with Sections XIV (Record Retention, Documentation and Availability of Information), XX (Reservation of Rights), and XXII (Indemnification) of this Order.

XXVIII. PUBLIC COMMENT ON THIS ORDER

144. Final acceptance by EPA of this Order shall be subject to Section 7003(d) of RCRA, 42 U.S.C. § 6973(d), which requires EPA to provide notice, opportunity for a public meeting and a reasonable opportunity to comment on the proposed settlement prior to its final entry. After consideration of any comments submitted during a public comment period of not less than fifteen (15) days (may be extended by EPA) held pursuant to Section 7003(d) of RCRA, EPA may withhold consent to all or part of this Order if comments received disclose facts or considerations which indicate that this Order is inappropriate, improper, or inadequate. Otherwise, this Order shall become effective when EPA signs the Order.

XXIX. SEVERABILITY

145. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.


XXX. EFFECTIVE DATE

146. This Order shall be effective when EPA signs the Order after the public comment period as specified in Section XXVIII (Public Comment on This Order) above. Within two (2) Business

1 days of signing the Order, EPA will provide Respondent with a copy of the signature page of the
2 Order signed by the Director of the Office of Waste & Chemicals Management by telefax.

3
4 The undersigned representative of Respondent certifies that it is fully authorized to enter into the
5 terms and conditions of this Order and to bind the party it represents to this document.

6
7 Agreed this 9th day of April, 2001.

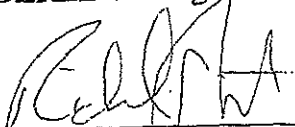
8
9 By: 
Signature

10
11 Georgia Baxter
Print Name

12
13 Executive Vice President
Title

14
15 J.H. Baxter & Co.
Company

16
17
18 It is so ORDERED and Agreed this 30 day of April, 2001.

19
20 By:  Date: 4/30/01

21 Richard Albright
22 Director, Office of Waste & Chemicals Management
Region 10, U.S. Environmental Protection Agency

23
24 EFFECTIVE DATE: April 30, 2001

